

From: [Vrooman Gary L](#)
To: [Cora, Lori](#)
Subject: RE: Oregon Hazardous Waste -- pesticide rule -- ARAR question
Date: Monday, May 11, 2015 8:38:21 AM

Lori,

Here are DEQ's answers to your questions below.

- 1) Yes, DEQ would view an in-water CDF complying with substantive ARAR requirements of 404 or MSPRA as meeting the substantive requirements of the HWIR.
- 2) Not in circumstances where the substantive requirements of the HWIR rule were met as in question 1.
- 3) DEQ does believe that substantive solid waste requirements are ARARs for CDFs if the CERCLA remedy requirements for the CDFs are not otherwise at least as protective as the solid waste requirements. The substantive requirements DEQ believes might be applicable to a CDF, depending on the other controls established by the CERCLA remedy, are located in OAR Chapter 340 division 093 and 095, including specifically the applicable portions of the following:
 - OAR 340-093-0130, Site Characterization Report;
 - OAR 340-093-0140, Detailed Plans and Specifications;
 - OAR 340-093-0150, Construction Certification;
 - OAR 340-093-0170, Cleanup Materials Contaminated with Hazardous Substances;
 - OAR 340-093-0190, Wastes Requiring Special Management;
 - OAR 340-095-0010, Location Restrictions;
 - OAR 340-095-0020, Operating Criteria;
 - OAR 340-095-0030, Design Criteria;
 - OAR 340-095-0050(1) & (2), Groundwater Monitoring;
 - OAR 340-095-0070(2), Closure Requirements.

Please let me know if you need any more information.

Gary Vrooman
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
971.673.1878.

From: Vrooman Gary L
Sent: Monday, April 13, 2015 4:45 PM
To: 'Cora, Lori'
Subject: RE: Oregon Hazardous Waste -- pesticide rule -- ARAR question

Hi Lori,

We will review this and get back to you.

Gary Vrooman
Assistant Attorney General
Natural Resources Section
Oregon Department of Justice

From: Cora, Lori [<mailto:Cora.Lori@epa.gov>]
Sent: Monday, April 13, 2015 4:41 PM
To: Vrooman Gary L
Cc: Koch, Kristine; Sheldrake, Sean
Subject: Oregon Hazardous Waste -- pesticide rule -- ARAR question

Hello, Gary. Hope all is well. As EPA continues to develop the Portland Harbor Feasibility Study and the cleanup alternatives, we would like some clarity on DEQ's view of its application of Oregon solid and hazardous waste regulations as they may relate to placement of dredged material in an in-water disposal facility. Attached is previous correspondence we have gotten from DEQ regarding the HWIR rule and its application to dredged material taken from the Arkema site. This correspondence is clear that its hazardous waste characterization and disposal requirements would apply to any upland disposal outside the jurisdiction of a 404 permit or permit under MSPA. But leaves in question whether a CDF authorized by a CERCLA ROD is "**subject to a permit that has been issued under Clean Water Act (CWA) section 404 or the Marine Protection, Research and Sanctuaries Act (MPRSA)**". Also, in earlier discussions about the Port of Portland's design of the CDF, DEQ indicated it may see that its solid waste regulations may have some application to an in-water disposal site even though the material being placed in the CDF is contaminated media and would be meeting the substantive criteria of Section 404 of the Clean Water Act.

Our questions are:

1. Does DEQ view an in-water CDF or other type of in-water disposal facility authorized by a CERCLA ROD and designed and constructed to meet the substantive requirements of Section 404 of the Clean Water Act as meeting the substantive conditions of Oregon's HWIR exemption to hazardous waste characterization and disposal requirements? If not, can you explain why not and provide the hazardous waste regulations DEQ would apply to an in-water disposal facility?
2. Would DEQ apply its pesticide residue rule to Arkema dredged sediment if placed in an in-water disposal facility authorized by a CERCLA ROD?
3. What Oregon solid waste regulations, if any, does DEQ believe are applicable or relevant and appropriate to the design and management of an in-water disposal facility selected under a CERCLA ROD?

As EPA is currently considering the screening of technologies, including disposal options, and developing the remedial alternatives for further 7 criteria analysis, we would appreciate your responses as soon as possible, but at least by early May. Thanks. If you have questions or wish

to discuss our request, please don't hesitate to call me.

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